

MAJOR G. ATKINS

IBLA 82-33

Decided December 17, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 26102.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Rules of Practice: Hearings

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Michael G. Pierce, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Major G. Atkins appeals the September 18, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Lucky Boy #1 placer mining claim, I MC 26102, abandoned and void because no notice of intention to hold the claim or evidence of assessment work performed on the claim was filed with BLM by December 30, 1980, for the assessment year ending September 1, 1980, as required by 43 CFR 3833.2. The claim was located March 18, 1947. Copy of the official record of the notice of location and an affidavit of assessment work for the assessment year ending September 1, 1979, was filed with BLM October 9, 1979.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located on or before October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after October 21, 1976, and to file a current copy of evidence of assessment work both in the county where the location notice is recorded and in the proper BLM office on or before December 30 of each calendar year thereafter. The statute also provides that failure to file any such instrument within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and the consequences of failure are replicated in 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

Appellant states he has performed development work each year and has recorded proof of such work in the office of the county recorder, Boise County, Idaho. He filed a copy of the 1981 assessment work, as recorded July 27, 1981, in Boise County, with BLM the same date, after receiving a notice from BLM to do so. He complains that no such notice

was given in 1980 so that he was unaware of the requirement to file such proof annually with BLM. He submitted a copy of his 1980 affidavit of labor, recorded June 13, 1980, in Boise County, with his appeal. Appellant contends that the summary forfeiture which BLM imposed upon the claimants is contrary to law, and that a hearing should be held to determine his actual intention concerning abandonment of the claim.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981).

[2] Arguments similar to those here presented were considered by the Board in Lynn Keith, supra. There we held

[t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

[3] Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. Appeal to this Board satisfies due process requirements. Fahey Group Mines, Inc., *supra*; George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978). The request for a hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

